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Recommended Citation

Raymond B. Marcin, Gandhi and Justice, 7 LOGOS: J. Cath. Soc. Thought & Culture 17 (Summer 2004).

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RAYMOND B. MARCIN

Gandhi and Justice

MOHANDAS K. GANDHI, the great and saintly Mahatma of India, once made a characteristic but nonetheless provocative statement about justice: “That action alone is just,” he wrote, “which does not harm either party to a dispute.”¹ There have been instances in Western jurisprudence in which that Gandhian—essentially Eastern—understanding of justice sometimes surfaces. Several decades ago, Martin Luther King Jr., in a groundswell of Gandhian activism,² raised that Gandhian understanding of justice to a position of near-dominance in Western thought. It may be no coincidence that both King and Gandhi suffered the same fate for their troubles. Conventional understandings of justice are not easily undone.

The conventional understanding on which Western systems of justice seem to be based is difficult to pin down, tied in as it is with the conflicted complexities of pluralist politics and jurisprudence. But playwright Jean Anouilh may have captured the essence of the conventional, and still dominant, Western understanding in his play *Becket*. Anouilh inserted into the script—just prior to the climactic point of the drama—a point of calm before the storm, a brief

colloquy on the meaning of justice. Moments before Thomas Becket is murdered in the Cathedral at Canterbury, he and Brother John, the somewhat feisty and very human monk who served him as acolyte, discussed a premonition of the attack:

MONK: Will it be today?

BECKET: (*Gravely*) I think so, my son. Are you afraid?

MONK: Oh, no. Not if we have time to fight. All I want is the chance to strike a few blows first; so I shan't have done nothing but receive them all my life. If I can kill one Norman first—just one, I don't want much—one for one, that will seem fair and right enough to me.

BECKET: (*With a kindly smile*) Are you so very set on killing one?

MONK: One for one. After that I don't much care if I am just a grain of sand in the machine. Because I know that by putting more and more grains of sand in the machine, one day it will come grinding to a stop.

BECKET: (*Gently*) And on that day, what then?

MONK: We'll set a fine, new, well-oiled machine in the place of the old one and this time we'll put the Normans into it instead.

(*Without irony*) That's what justice means, isn't it?

BECKET: (*Smiles and does not answer*).³

It is a good measure of our discomfort with Western systems of justice that Becket merely smiles and does not answer Brother John. We might have expected Becket, who at that point in the play has developed into a wise and saintly man, to answer Brother John with some saintly wisdom: "No, Brother John. Justice does not mean that. Justice means healing, and reconciling, and showing mercy even though the Normans have shown none." But Becket only smiles. The discomfiting truth is that justice does indeed mean what Brother John thinks it means. It is indeed just that a wrongdoer be punished. And that being so, striking back at the oppressor is Broth-

er John's entitlement and the oppressor's due. Hidden in Becket's wan smile at the end of the colloquy, one sees the image of Normans oppressing Saxons, then Saxons oppressing Normans, then Normans oppressing Saxons, et cetera ad nauseam—all in the name of justice. One might wish there were more to justice than the scale.

Alf Ross, the Scandinavian jurist and apologist for the logical positivist school of jurisprudence, once analyzed the concept of justice as understood by the major Western legal philosophers and jurisprudential schools and was able to discern the major Western components of the concept.⁴ Beyond the classic and somewhat question-begging Roman concept of giving everyone their due,⁵ Ross noted the uniform occurrence of an equality notion in the more content-oriented definitions of the term—a requirement, in general, that no one be arbitrarily subjected to treatment that differs from that accorded to any other person.⁶ Equality is a nice ideal, but it sometimes cuts in strange ways—it was the basis for Brother John's "one for one" killing of a Norman.

Ross further observed that because none of the scholars' definitions of justice demanded absolutely equal treatment for individuals, there was a rationality component in the concept as well—a demand that differing treatment be in some way reasonable—a yardstick of evaluation for departures from absolute equality.⁷ In these features—the lack of a demand for absolute equality and instead a demand for some form of rationality governing departures from equality—Ross found the gremlin that besets and often untracks the Western understanding of justice. He found the gremlin hiding mischievously in one of the noblest facets of Western democratic thought—its tolerance and even championing of ideological pluralism. Even the wisest among us differ as to the grounding of concepts of equality and rationality.

Ross may have overstated the case when he said, "All wars have been fought by all parties in the name of justice, and the same is true of the political conflict between social classes."⁸ There does,

however, seem to be just enough empirical truth in the assertion to give one pause. It may not be, as Ross contended it was, “possible to advance every kind of material postulate in the name of justice,”⁹ but Ross’s main lesson is not lost on us. In an environment that tolerates and even celebrates ideological pluralism, people may honestly, honorably, and rationally disagree about the content and even the meaning of the term “justice,” and any approach to defining the term that does not take that fact into account is doomed. Ross unsettlingly concludes,

To invoke justice is the same thing as banging on the table: an emotional expression which turns one’s demand into an absolute postulate It is impossible to have a rational discussion with a man who mobilizes “justice,” because he says nothing that can be argued for or against. His words are persuasion, not argument. The ideology of justice leads to implacability and conflict, since on the one hand it incites to the belief that one’s demand is not merely the expression of a certain interest in conflict with opposing interests, but that it possesses a higher, absolute validity; and on the other hand it precludes all rational argument and discussion of a settlement.¹⁰

So it is that we limp along in our Western jurisprudential systems, “banging on the table,” until someone in authority whose say is final either agrees with us or agrees with our adversary who has been banging on the other end of the table. Perhaps it is the final say that saves us from the chaos covered by Thomas Becket’s wan smile.

Nonetheless, the implications of this for participants in our Western systems of politics and jurisprudence are obvious and ominous. Our Western systems are—predictably and predominantly—win-or-lose apparatuses. With an understanding of justice that grounds itself in the implacability and conflict inherent in ideological pluralism, we wallow in division and hostility, with some of us banging on

the left side of the table and some of us banging on the right side, leftists shouting down rightists, then rightists shouting down leftists, on and on, all in the name of justice. We are Brother John and the Normans. Deep down, if we think long enough and deeply enough, we feel discomfort. Deep down, far below the superficial level of verbal bangings on the table, we somehow know that what is needed in the area of human-social-interaction-gone-awry is not a victory of interests or ideologies but a healing of persons.

Now back to Mohandas K. Gandhi. We don't often think of Gandhi as a legal scholar, and yet he was one, perhaps a great one—and a London-educated barrister called to the Temple Bar to boot. No doubt his stature as a modern-day saint gets in the way. Or perhaps we neglect his legal scholarship because we do not find in his writings analyses of Holmes, Cardozo, Pound, Austin, or Bentham. We cannot seem to take seriously a legal scholar who has not bowed in obeisance before those framers of the Western legal mind. What we do find in Gandhi's legal scholarship is an eclectic and seemingly narrow sampling of the speeches of Jesus, the thought of Tolstoy, and the works of the nineteenth-century American transcendentalists.

There is a reason for the seeming narrowness and selectivity of Gandhi's legal scholarship. In its practical applications, his thought was original. Gandhi applied his thought to issues of social justice and to the appeals to justice that inhabit group politics. Moreover, the testing ground for the truth of Gandhi's views on justice was not logic or precedent or conformity with the abstract scholarship of the past, but (as Holmes would have appreciated) experience. It is in that modest testing ground of experience that we find the seed that took hold and grew in Gandhi's mind, to blossom into an understanding of justice that eschews banging on the table for something a bit nobler—a healing of persons. We find that West and East both meet and are transcended in Gandhi's experiential understanding of justice, and in that understanding, ideological pluralism is but an irrelevancy. Furthermore, Gandhi's understanding of justice is not

merely an epistemology (as is our Western understanding), it is, in a deeply philosophical sense, an understanding of being itself—an ontology.

It is necessary, in approaching Gandhi's counterproposal to our Western definitions of justice, to understand a bit about Gandhi's sources and the grounding of his ontological, experiential approach. There is a reason for this need to draw on Gandhi's sources as an aid in understanding the grounding of Gandhi's thought. Although Gandhi was a prolific writer, most of what he wrote was issue-specific and, of course, experiential rather than systematized into an organized, abstract theoretical structure. The theory and its grounding are there, but they are blended into discussions of the problems of the age of which Gandhi was a living part. Gandhi sought the justice that was missing in the British colonial rule over India, in the Hindu treatment of the untouchables,¹¹ in the relationships between Hindu and Moslem Indians, and in the apartheid of South Africa—all issues that potentially implicate Brother John's understanding of justice, an understanding gently rejected by Gandhi.

It is no secret that Gandhi was greatly influenced by the religious and moral writings of the writer Leo Tolstoy.¹² It is perhaps less well known that Tolstoy was steeped in the philosophy of Arthur Schopenhauer.¹³ That is not to say that Gandhi necessarily took some philosophical principles from Schopenhauer, even indirectly. Whatever principles Gandhi could have taken from Schopenhauer were more directly and more readily available in Gandhi's own native Hinduism and in his understandings of the essence of the Christianity to which he had been exposed. It is merely to suggest that there may be a consonance between the thoughts of Schopenhauer and Gandhi, with Tolstoy's thought providing the resonance. The sympathetic vibrations are nowhere clearer than in the solutions each propounded to the problem of evil, leading to a derivative understanding of the meaning of justice.

Schopenhauer's solution to the problem of evil is presaged quite

clearly in his own ontology. For Schopenhauer, the true reality, that is, the thing-in-itself of everything, is will. Also, consistent with Immanuel Kant, Schopenhauer held that human knowledge of the outside world is conditioned by the structure of the human mind. It is the human mind, in both Schopenhauer's and Kant's thought, that imposes time, space, and the principle of causality on all its perceptions of the outside world. Time, space, and causality do not exist in the thing-in-itself. For Schopenhauer, only timeless, spaceless, and causeless will exists. Consequently the will is undivided. There is, at the noumenal or thing-in-itself level of reality, a basic, real unity among all existence—a wholeness to all that exists. We are more than our brother's keeper. In the most basic ontological sense, we are our brother. Schopenhauer applies all this to the problem of evil:

The difference between the inflicter of suffering and he who must endure it is only phenomenon, and does not concern the thing-in-itself which is the will that lives in both. Deceived by the knowledge bound to its service, the will here fails to recognize itself; seeking enhanced well-being in *one* of its phenomena, it produces great suffering in *another*. Thus in the fierceness and intensity of its desire it buries its teeth in its own flesh, not knowing that it always injures only itself, revealing in this form through the medium of individuation the conflict with itself which it bears in its inner nature. Tormentor and tormented are one. The former is mistaken in thinking that he does not share the torment, the latter in thinking he does not share the guilt.¹⁴

Gandhi, too, wrote about the problem of evil, which he discussed in terms of *himsa*, a Hindi word carrying the connotation of violent harm or killing:

We are helpless mortals caught in the conflagration of *himsa*. The saying that life lives on life has a deep meaning. . . . Man cannot for a moment live without consciously or

unconsciously committing outward *himsa*. . . . Because underlying *ahimsa* (i.e., nonviolence) is the unity of all life, the error of one cannot but affect all, and hence man cannot be wholly free from *himsa*.¹⁵

Life lives on life and yet all life is one. Gandhi and Schopenhauer both held to that proposition. And the lesson Schopenhauer drew (that “tormentor and tormented are one”) but did not put into practice¹⁶ is the lesson that Gandhi also drew but did put into practice—with society-altering results. For the success of his famed technique of nonviolent resistance, Gandhi banked on that very principle—that is, deep down, at some unfathomable level, tormentor and tormented are one, and by accepting the torment (even by willingly seeking it out), the tormented can somehow bring the tormentor to that same realization.¹⁷

It is well known that Gandhi’s understanding of the Hindu concept of *himsa* (violence) led him to a doctrine of *a-himsa* (nonviolence) and through that to a positive and remarkable state of holiness and wholeness. Gandhi would likely have agreed with Schopenhauer’s framing of the grounding for *ahimsa*:

The most fundamental of all our errors is that, with reference to one another, we are not-I. . . . To say that time and space are mere forms of our knowledge, not determinations of things-in-themselves, is the same as saying that the teaching of metempsychosis, namely that “one day you will be born again as the man whom you now injure, and will suffer the same injury,” is identical with the frequently mentioned formula of the Brahmins, *Tat tvam asi*, “This thou art.” All genuine virtue proceeds from the immediate and *intuitive* knowledge of the *metaphysical identity of all being*.¹⁸

Parenthetically, this same passage deeply impressed, of all people, the modern quantum physicist Erwin Schrödinger, who was also steeped in a knowledge of Schopenhauer:

Inconceivable as it seems to ordinary reason, you—and all other conscious beings as such—are all in all. Hence this life of yours which you are living is not merely a piece of the entire existence, but is in a certain sense the *whole*; only this whole is not so constituted that it can be surveyed in one single glance. This, as we know, is what the Brahmins express in that sacred, mystic formula which is yet really so simple and so clear: *Tat tvam asi*, this is you.¹⁹

Brahman spirituality developed within Gandhi's own Hindu tradition, but this Brahman understanding of the underlying interidentity and connectedness of all being—an understanding shared by Gandhi, Schopenhauer, and Schrödinger—is really a staple of Eastern religious thought in general, including the Buddhist and Taoist traditions.

The unique contribution that Gandhi made to the science of jurisprudence is that he took this staple of Eastern religious thought—shared to varying degrees, but shared indeed, by philosophers like Schopenhauer, moralists like Tolstoy, and by many of today's contemporary quantum theorists—and put it into practice experientially in the arena of social justice. Gandhi's concept of justice, based in that staple of Eastern religious thought, was also based in one staple of the Western understanding of justice—entitlement. The entitlement that held Gandhi's attention, however, bore little resemblance to the acquisitive, table-banging form that permeates Western jurisprudence. Gandhi held it was the oppressor—the doer of injustice—that had the entitlement, and it was an entitlement, not directly to justice, but rather to have the oppressors see the justice or injustice of their activity by viewing its concrete results on, and through the eyes of, their victims. The oppressors may see the results of their actions and, more likely than not, exult in those results. If the vantage point of the oppressors can be changed to that of their victims, however, that exultation will be blunted and quite possibly replaced by that insight into deep-down reality summarized in the Brahman formulation *Tat tvam asi*.

What Gandhi relied on for the effectiveness of this experiential working-out of justice was the fact that human beings see other human beings as other selves, that is, an identification takes place, based on the *Tat tvam asi* Eastern understanding of the underlying interidentity and connectedness of all being. It is a concept grounded in the identity—not of interests, but of being—among human beings. Both operatively and in that deep sense, Gandhi's approach is grounded in the inherent goodness of the human being—that aspect of humanness which those from the Judeo-Christian tradition will recognize as the image of God.²⁰ Judeo-Christian theologies do not often embrace the Brahman ontological-identity principle, but they do embrace the doctrine that all are made by God in God's image and that spark of divinity in each of us makes each of us our brother's keeper.

Gandhi's views developed and changed over the years because they depended so much on events and experiences. Any thumbnail sketch of his theory of justice is bound to be incomplete. The focus here is not on capturing its detail, but rather its spirit. The following quotation from his explanation of *a-himsa* may come close to capturing the spirit of his theory of justice. Those acquainted with the Christian concept of *agape* (love) will find parallels in *a-himsa*:

We punish thieves, because we think they harass us. They may leave us alone; but they will only transfer their attentions to another victim. This other victim however is also a human being, ourselves in a different form, and so we are caught in a vicious circle. The trouble from thieves continues to increase, as they think it is their business to steal. In the end we see that it is better to endure the thieves than to punish them. The forbearance may even bring them to their senses. By enduring them we realize that thieves are not different from ourselves, they are our brethren, our friends, and may not be punished. But whilst we may bear with the thieves, we may not endure the affliction. That would only induce cowardice. So

we realize a further duty. Since we regard the thieves as our kith and kin, they must be made to realize the kinship. And so we must take pains to devise ways and means of winning them over. This is the path of *ahimsa*.²¹

Those familiar with Jesus' Sermon on the Mount will probably note that the path of *ahimsa* is also the path to the kingdom of heaven:

Ye have heard that it hath been said, an eye for an eye, and a tooth for a tooth: But I say unto you, that ye resist not evil: but whosoever shall smite thee on thy right cheek, turn to him the other also. And if any man will sue thee at the law, and take away thy coat, let him have thy cloak also. And whosoever shall compel thee to go a mile, go with him twain. . . . Ye have heard that it hath been said, thou shalt love thy neighbor, and hate thine enemy. But I say unto you, love your enemies, bless them that curse you, do good to them that hate you, and pray for them which despitefully use you, and persecute you; that ye may be the children of your Father which is in heaven; for he maketh his sun to rise on the evil and on the good, and sendeth rain on the just and on the unjust.²²

Gandhi willingly and frequently acknowledged his debt to Jesus' Sermon on the Mount.

One need not be a careful reader to notice a similarity between Gandhi's *ahimsa* and Jesus' love of enemies. Jesus did not stop at the nonresistance injunction. One is told that one must not resist evil (or "the evil one" or "an evil one" in some translations). And then one is told what one must affirmatively do. Similarly, under Gandhi's *ahimsa*, one does not stop at nonresistance. One must take steps to affirmatively apprise the evildoer of his or her human identity. This, too, was the designed result of the Sermon on the Mount ethic. In Paul's retelling of the sermon at the end of chapter 12 of his Epistle to the Romans he restates the nonresistance to evil ethic and draws a Gandhian conclusion: "Recompense no man evil for evil. . . . If thine

enemy hunger, feed him; if he thirst, give him drink: for in so doing thou shalt heap coals of fire on his head.”²³ Bible commentators agree that the “heaping coals of fire” figure of speech means something like engaging the enemy’s conscience and making them see the enormity and the evil of what they are doing.

Gandhi’s *ahimsa* has been referred to not as an ethic of nonresistance to evil, but rather as an ethic of nonviolent (Gandhi himself disliked the adjective “passive”)²⁴ resistance to evil. The name one gives to the ethic, however, seems far less important than its paradoxical message: Evil is most effectively resisted, and justice more effectively established, through nonresistance. Gandhi’s discovery was that not only by accepting the physical consequences of the unjust act, but also (and this most important) by bringing the fact of that injustice and the fact of shared human identity to the attention of the evildoer, one was bringing about a situation of true, thorough, and ultimate justice, instead of the forced physical representation of justice with which courts and lawmakers must content themselves. A healing and not a victory occurs.

There is an obvious attraction in Gandhi’s theory of justice. Almost by definition, and certainly by design, if it works, it solves the problem of recidivism. But criticisms abound. One criticism is that Gandhi’s theory, as applied to governmental injustices, works outside, against, or perhaps “on” the government’s institutions and organs of justice and not with, as a part of, or even (in the real world) as a substitute for them. Tolstoy’s adherence to Jesus’ nonresistance to evil ethic, in fact, led him to deny the moral legitimacy of the bench and the bar.²⁵ Another criticism is that Gandhi’s theory is otherworldly, unrealistic, too ideal.²⁶ Jesus’ nonresistance to evil ethic also has been subjected to this criticism, sparking G. K. Chesterton’s famous epigram, “The ideal of Christianity has not been tried and found wanting. It has been found difficult and not tried.” To give Gandhi his due on this point, his nonviolent resistance doctrine is seldom delved into deeply by academicians, and the common belief that it amounts to sketchy idealism is unwarranted.

Gandhi placed great stress on method and effectiveness. This is apparent in Gandhi's oft-misunderstood teaching on fasting as a method of nonviolent resistance:

Fasting in Satyagraha has well defined limits. You cannot fast against a tyrant, for it will be a species of violence done to him. You invite penalty from him for disobedience of his orders but you cannot inflict on yourselves penalties when he refuses to punish and renders it impossible for you to disobey his orders so as to compel infliction of penalty. Fasting can only be resorted to against a lover, not to extort rights but to reform him, as when a son fasts for a father who drinks.²⁷

In Gandhi, we find a bit of a lesson—the lesson that justice is to be sought rather than used. It is not a means, it is an end—an end that is justified by the recognition that all human beings are other selves, ourselves in another form: “That action alone is just, which does not harm either party to a dispute.” The lives of Gandhi, his followers, and many others are testimony that we have the means of achieving that understanding of justice within us. Deep down, we know that. And we wonder what goes wrong.

Notes

1. Mohandas K. Gandhi, *The Collected Works of Mahatma Gandhi*, vol. 19 (Delhi: Government of India, Ministry of Information and Broadcasting, Publications Division, 1958), 233; quoted in Erik Erikson, *Gandhi's Truth: On the Origins of Militant Nonviolence* (New York: W. W. Norton, 1969), 342.
2. See, for example, Mary King, *Mahatma Gandhi and Martin Luther King, Jr.* (New York: UNESCO, 1999).
3. Jean Anouilh, *Becket or the Honor of God*, trans. Lucienne Hill (New York: Signet, 1960), 125.
4. Alf Ross, *On Law and Justice* (Berkeley: University of California Press, 1959), 269.
5. The seminal and somewhat question-begging definition is that of Ulpian: “Honeste vivere, alterum non laedere, suum cuique tribuere” (To live honestly, to cheat no one, and to give each his due). Thomas Cooper, *The Institutes of Justinian* (Philadelphia: P. Byrne, 1812) § III, at 6.
6. See Ross, *On Law and Justice*, 269.

7. Ibid., 270.
8. Ibid., 269.
9. Ibid., 275.
10. Ibid., 274–75.
11. Mohandas K. Gandhi, *Nonviolent Resistance* (Satyagraha) (New York: Schocken, 1951), 180.
12. See, for example, Mohandas K. Gandhi, *An Autobiography: The Story of My Experiments with Truth*, trans. Mahadev Desai (Boston: Beacon Press, 1957), 137–38. This text was first published in two volumes in 1927 and 1929, respectively, in the Gujarati language.
13. See Bryan Magee, *The Philosophy of Schopenhauer*, rev. ed. (Oxford: Clarendon Press, 1997), 403–4.
14. Arthur Schopenhauer, *The World As Will and Representation*, vol. 1, trans. E. F. J. Payne (New York: Dover Books, 1969), 354.
15. Gandhi, *An Autobiography*, 349.
16. See Raymond B. Marcin, “Schopenhauer’s Theory of Justice,” *Catholic University Law Review* 43 (1994): 813, 844.
17. Schopenhauer, *The World As Will and Representation*, 365.
18. Ibid., 600–601.
19. See Erwin Schrödinger, *My View of the World*, trans. Cecily Hastings (Woodbridge, Conn.: Ox Bow Press, 1983), 21–22 (emphasis in original). This text was originally published by Paul Zsolnay Verlag GMBH in 1961.
20. “And God created man to his own image, to the image of God he created him: male and female he created them.” Gen. 1:27. Douay-Rheims Version.
21. Gandhi, *Nonviolent Resistance*, 41.
22. Matt. 5:38–45. King James Version.
23. Rom. 12:17, 20 King James Version.
24. See, for example, Mohandas K. Gandhi, *All Men Are Brothers: Autobiographical Reflections* (New York: Continuum, 1982), 91–92.
25. For what may be the most devastating attack in all literature on the idea that one can be a Christian and a lawyer at the same time, see, generally, Leo Tolstoy, *My Religion* (1885).
26. The conventional wisdom among those who would counsel against taking Jesus’ non-resistance to evil ethic too seriously is that the ethic is simply an example of “Hebrew hyperbole”—the writing technique that overstresses in order to make a point. For example, “If thine eye offend thee, pluck it out” (Matt. 18:9. King James Version). But Jesus gave specific examples of what he meant by not resisting evil, and lawyers must be sobered by the contexts into which Jesus placed his ethic: the criminal assault (turn the other cheek), the civil lawsuit (give up your tunic as well), and the act of political oppression (walk the extra mile). See Matt. 5:39–41.
27. Letter to George Joseph, reprinted in Gandhi, *Collected Works*, 182.